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10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
11
12 IN AND FOR THE COUNTY OF MARICOPA

13 THE STATE OF ARIZONA ex rel. TERRY
14 GODDARD, the Attorney General, and THE
15 CIVIL RIGHTS DIVISION OF THE ARIZONA
DEPARTMENT OF LAW,

16 Plaintiff,

17
18 vs.

19 CITY OF COTTONWOOD; and CITY OF
20 COTTONWOOD POLICE DEPARTMENT,

21 Defendants.

No. CV2009-014365

**AMENDED COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF**

Hon. Dean M. Fink

22
23 Plaintiff, the State of Arizona ex rel. Terry Goddard, the Attorney General, and the
24 Civil Rights Division of the Arizona Department of Law (collectively the "State"), for its
25 Complaint alleges as follows:
26

INTRODUCTION

This is an action brought under the Arizona Civil Rights Act to correct unlawful employment practices, to provide appropriate relief to an aggrieved person, and to vindicate the public interest. Specifically, the State brings this matter to redress the injury sustained because, at the time Charging Party Monica Kuhl (‘‘Kuhl’’) was applying to be promoted to sergeant in December 2006, Defendants adopted a physical fitness test and performance standards that Defendants knew had a disparate impact on women. Defendants had not validated the physical fitness test or performance standards as job related or necessary to the position of sergeant (or to any other law enforcement position with Defendants) and had not considered less restrictive physical fitness testing standards that would satisfy Defendants’ actual business needs without adversely affecting female police officers or applicants.

The physical fitness test and performance standards were incorporated into a set of testing protocols and procedures set forth in General Order 206. Although General Order 206 did not require officers like Kuhl who had been hired before January 1, 2007, to pass the physical fitness test until January 1, 2010, Defendants used Kuhl’s inability to pass the test as a pretext to deny her promotion to sergeant twice in 2007 and once in 2008, and to promote less-qualified men in her stead. More, Defendants relaxed testing protocols and passing standards for at least one man who applied to the CPD after January 1, 2007, to allow him to enter the police training academy, while holding Kuhl and a state-certified female police officer who applied to the CPD after January 1, 2007, to more rigorous standards to prevent them from being promoted or hired. Finally, because Kuhl opposed Defendants’ discriminatory application of the General Order 206 physical fitness test, Defendants retaliated against her by, among other things, denying her an important training opportunity; requiring her to submit to an unwarranted medical examination; and placing her on light duty for five months when similarly situated male officers were not placed on light duty at all, purportedly because she was medically ‘‘unfit’’ for duty, although Kuhl’s own physician represented there

1 were "no contraindications" to her performing all her CPD duties. Therefore, Defendants
2 actions in this case constitute disparate impact and disparate treatment employment
3 discrimination based on sex in violation of the Arizona Civil Rights Act, A.R.S. § 41-
4 1463(B)(1) & (2), and retaliation in violation of A.R.S. § 41-1464(A).

5 JURISDICTION AND VENUE

6 1. This Court has jurisdiction of this matter pursuant to A.R.S. § 41-1481(D).

7 2. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401(17).

8 PARTIES

9 3. The Civil Rights Division of the Arizona Department of Law is an administrative
10 agency established by A.R.S. § 41-1401 to enforce the provisions of the Arizona Civil Rights
11 Act, A.R.S. § 41-1401 *et seq.*

12 4. The State brings this action on its own behalf and on behalf of Monica Emma
13 Kuhl, an aggrieved person, as provided by A.R.S. §§ 41-1481(D) and (G).

14 5. Defendant City of Cottonwood ("Cottonwood") is an incorporated municipality
15 located in Yavapai County, Arizona. Cottonwood's City Hall is located at 827 N. Main Street,
16 Cottonwood, Arizona 86326.

17 6. Defendant Cottonwood Police Department ("CPD") is a department of
18 Cottonwood. CPD's headquarters is located at 199 S. 6th Street, Cottonwood, Arizona 86326.

19 7. Kuhl is currently a detective with CPD, where she has worked as a law
20 enforcement officer since approximately November 23, 1997.

21 8. Doug Bartosh ("Bartosh") currently is Cottonwood's City Manager. When the
22 physical fitness tests and standards set forth in General Order 206 were adopted, Bartosh was
23 CPD's Chief of Police.

24 9. Jody Fanning ("Fanning") currently is CPD's Chief of Police.
25
26

10. Gary Eisenga ("Eisenga") was formerly a Patrol Sergeant and currently is a Commander for CPD and had primary responsibility for implementing and administering the physical fitness test set forth in General Order 206.

11. At all relevant times, Cottonwood and CPD (when collectively, "Defendants") were employers within the meaning of A.R.S. § 41-1461(4)(a).

12. At all relevant times, Kuhl has been an employee of CPD within the meaning of A.R.S. § 41-1461(3)(a).

13. The State is informed and believes and therefore alleges that Defendants were legally responsible for the acts or omissions giving rise to this cause of action and legally and proximately responsible for damages as alleged pursuant to A.R.S. § 41-1481(G).

BACKGROUND

14. Defendants allege that General Order 206 became effective on or about December 12, 2006. Pursuant to General Order 206, all CPD sworn personnel hired on or after January 1, 2007, would undergo mandatory physical fitness testing twice each year and be required to meet or exceed minimum performance standards set forth in the Order. All sworn members employed by CPD prior to January 1, 2007, would undergo mandatory physical fitness testing twice each year, but would not be required to meet or exceed the minimum standards until the third year following issuance of the Order. As such, sworn personnel employed by CPD before January 1, 2007, would not be required to meet or exceed the Order's physical fitness standards until January 1, 2010.

15. The physical fitness performance standards contained in General Order 206 were developed in a study conducted by Fitness Intervention Technologies ("FIT") in 2000 and 2001. FIT was commissioned by Arizona Department of Public Safety ("DPS") to conduct this study in order to identify and validate job-related physical fitness tests, standards and programs for applicants and recruits to the Arizona Law Enforcement Academy ("ALEA") and for incumbent officers of selected agencies. Some county and local police departments,

1 including CPD, also participated in the study by providing written information about the
2 physical performance demands for the job of "police officer" at their respective agencies.

3 16. The FIT study recommended implementing "absolute" physical fitness standards,
4 as opposed to the "relative" fitness standards based on age and gender used by many police
5 departments, to ensure that all officers could satisfy all of the performance demands of the
6 composite "police officer" job description. Additionally, whereas many agencies only require
7 new applicants to satisfy the relative physical fitness requirements, the FIT study also
8 recommended making passing absolute physical fitness standards mandatory for incumbent
9 officers as well.

10 17. The FIT study recommended that participating police agencies adopt a battery of
11 physical fitness tests, to be performed in sequence with brief rest periods between each test,
12 and require that both applicants and incumbent officers satisfy the minimum absolute standard
13 for each test. The FIT study physical fitness tests and performance standards are as follows:
14 (1) an agility run to be completed in 18.2 seconds or less; (2) a single repetition bench press of
15 175 pounds or 79% of the officer's body weight; (3) a vertical jump of not less than 16 inches;
16 (4) a 300 meter run in 60 seconds or less; (5) a maximum number of push-ups in succession
17 (but no fewer than 30); (6) not less than 34 sit-ups in one minute; and (7) a 1.5 mile run in not
18 less than 15 minutes and 4 seconds.

19 18. The FIT study demonstrated that making these absolute fitness standards
20 mandatory would have an adverse impact on female police officers. For example, testing of
21 the Phoenix Police Department conducted in the context of the FIT study yielded the following
22 relative fail rates for men and women: (1) agility run—27% for men; 94% for women; (2) 175
23 pound bench press—21% for men; 100% for women (2)(a) weight ratio bench press—7% for
24 men; 78% for women; (3) vertical jump—21% for men; 89% for women; (4) 300 meter run—
25 26% for men; 84% for women; (5) push-ups—24% for men; 84% for women; (6) sit-ups—
26 20% for men; 36% for women; and (7) 1.5 mile run—24% for men; 84% for women.

1 19. The FIT study stated that women could be expected to improve their performance
2 by 20 to 25% in 3 to 6 months with a moderate training program. The study also
3 acknowledged, however, that even with training, the average woman police officer may not be
4 able to satisfy the FIT standard for push-ups or the bench press.

5 20. By issuing General Order 206, Defendants adopted and made mandatory for all
6 applicants to the CPD force and all incumbent CPD sworn personnel the physical fitness
7 performance standards that the FIT study established had a disparate impact on female police
8 officers.

9 21. Upon information and belief, DPS did not adopt the physical fitness tests and
10 performance standards recommended by the 2000 FIT study. Instead, DPS requires recruits to
11 pass the Peace Officer Physical Aptitude Test ("POPAT"), for which cadets are trained in the
12 ALEA.

13 22. The POPAT is comprised of five work sample tests designed to simulate actual job
14 tasks for a patrol officer: (1) 99-yard obstacle course run; (2) 165-pound body drag; (3) six-
15 foot chain-link fence climb; (4) six-foot solid fence climb; and (5) 500-yard run. ALEA cadets
16 are scored on each test individually, and their individual test scores are combined to arrive at a
17 total test score for each cadet. Scoring the tests in this manner, as opposed to scoring each
18 individual test on a pass/fail basis as the FIT study recommended, allows cadets to compensate
19 for performing less than optimally on one test by performing extremely well on other tests.

20 23. According to a January 1, 2007, publication of the Arizona Peace Officer Standards
21 and Training Board ("AZ POST"), the minimum total passing POPAT score, for both male
22 and female cadets, is 384. The fail rate for female cadets is under 10%.

23 24. In December 2006, CPD published a Promotional Process for the Position of Police
24 Sergeant ("Promotional Process") announcing two available sergeant positions in 2007.

25 25. The Promotional Process was limited to current employees, i.e., sworn CPD
26 personnel hired before January 1, 2007.

1 26. The Promotional Process mandated that the successful candidate satisfy the
2 physical fitness standards imposed by General Order 206 before being promoted to sergeant.

3 27. According to General Order 206, no CPD sworn personnel hired before January 1,
4 2007, would be required to satisfy the FIT study standards until January 1, 2010.

5 28. Defendants have not performed, or caused to have performed by any outside
6 agency, any study correlating performance on the General Order 206 battery of physical
7 fitness tests with performance of the job duties of a CPD sergeant.

8 29. Defendants have not performed, or caused to have performed by any outside
9 agency, any study correlating performance on the General Order 206 battery of physical
10 fitness tests with performance of any CPD law enforcement position.

11 30. Before General Order 206 was issued in December 2006, CPD had basic physical
12 fitness requirements for applicants to the force but did not require its incumbent officers—
13 including incumbent officers seeking promotion—to take or pass a physical fitness test.

14 31. Kuhlert was the only woman to apply for the CPD sergeant positions available in
15 2007.

16 32. Kuhlert is the only woman ever to apply for promotion to sergeant at the CPD.

17 33. As required by the Promotional Process, Kuhlert submitted a written application,
18 took a written exam on January 1, 2007, and an oral exam on January 17, 2007. Kuhlert's total
19 score on these exams was the second highest of all officers who applied to promote to sergeant
20 at that time.

21 34. Over her nearly 13 years with the CPD, Kuhlert has received many commendations
22 and letters of recognition from her superiors, other law enforcement agencies, prosecutors and
23 the public.

24 35. Because Kuhlert was under the care of a physician for a back injury and had not been
25 released to take the physical fitness exam, the first of two available sergeant positions was
26

1 given to a male officer who passed the physical fitness test on January 16, 2007, and was
2 promoted on February 18, 2007.

3 36. After being released by her doctor, Kuhlth took the physical fitness exam on April
4 25, 2007, and July 10, 2007. On each of these tests, Kuhlth met the FIT standards for the bench
5 press, vertical leap, push-ups and sit-ups but did not meet the standards for the agility run (18.7
6 seconds in April; 18.3 seconds in July); 300 meter run (71 seconds in April; 69 seconds in
7 July); and the 1.5 mile run (17:47 in April; 17:43 in July).

8 37. Kuhlth would have taken the test again in October 2007, but due to continuing back
9 problems exacerbated by ongoing training to try to pass the physical fitness test that required
10 further treatment, was advised by her doctor not to run for 30 days.

11 38. On October 17, 2007, Bartosh, who at that time was still CPD Chief of Police,
12 wrote Kuhlth informing her that, although she was then the top-ranked candidate for sergeant,
13 he would be giving the other available position to another applicant because she had not yet
14 passed the fitness test and it was unclear when she could be prepared to do so. Accordingly,
15 another male officer, who had passed the physical fitness exam on December 5, 2006, and
16 October 20, 2007, was promoted to sergeant on October 28, 2007.

17 39. Pursuant to General Order 206, Kuhlth took the physical fitness test again on
18 January 16, 2008, and again did not pass the running components of the test. She also did only
19 30 sit-ups in one minute.

20 40. On April 4, 2008, Kuhlth wrote a memorandum to Fanning, who was then the
21 Interim Chief of Police, and the CPD Human Resources Department, expressing her concerns
22 about the disparate impact that the physical fitness test had on female officers and her belief
23 that the fitness test operated as a "glass ceiling" preventing her promotion.

24 41. In an April 21, 2008, letter responding to Kuhlth, Fanning agreed that the fitness test
25 had a disparate impact on women, but maintained that it was allowed because the fitness
26 standards were "job related for the position in question and consistent with business

1 necessity." Fanning's letter to Kuhlert also cited the statement from the FIT study that, with 3 to
2 6 months moderate training, female officers could improve their performance on the physical
3 fitness tests by 20 to 25 percent.

4 42. In May 2008, two more sergeant positions became available at CPD. In the May
5 2008 promotional process, as opposed to the one posted in December 2006, a candidate who
6 had not yet passed the physical fitness exam could not take the written or oral exams for
7 sergeant.

8 43. In another attempt to qualify for promotion, Kuhlert took the physical fitness test on
9 May 12, 2008. That time, she passed the agility run and bench press, but only jumped 15
10 inches on the vertical jump. She also did only 30 sit-ups in one minute, and ran the 300 meters
11 in 72 seconds. Detective Kuhlert re-injured her back during the 1.5 mile run, which she
12 nevertheless completed in 19 minutes and 17 seconds.

13 44. Two male applicants who passed the May 12, 2008, fitness test were promoted to
14 sergeant on June 22, 2008, and August 17, 2008, respectively.

15 45. As a result of the back injury sustained during the May 12, 2008, fitness test, Kuhlert
16 filed a worker's compensation claim against CPD.

17 46. In the last quarter of 2008, CPD held testing for a law enforcement officer position.

18 47. A female officer named Lori Carver ("Carver"), who had been certified by DPS in
19 January 2008, tested among other individuals.

20 48. Carver was the only previously certified officer to test for the CPD position at that
21 time.

22 49. Because Carver had been previously certified as a law enforcement officer, CPD
23 policy did not require that she take the written exam. Carver was required to take an oral
24 exam, however, which she passed.

25 50. A male applicant named Clint Combs ("Combs"), a personal friend of a CPS
26 sergeant and with whom Eisenga had played golf, also tested on the same day as Carver.

1 51. Because Combs was not a previously certified police officer, he was required to
2 take both the written and oral exams.

3 52. According to CPD policy, an applicant must score a total of 70% on the written and
4 oral exams to be eligible to take the physical fitness exam, which CPD placed at the end of the
5 application process for new hires.

6 53. Combs' total score on the written and oral exams missed the cut-off by a few tenths
7 of a percent.

8 54. In consultation with Fanning, Eisenga rounded Combs' score on the written test up
9 to 70% to allow Combs to take the physical fitness test.

10 55. Although others had taken the written and oral exams, Carver and Combs were the
11 only applicants who were allowed to take the physical fitness exam.

12 56. Eisenga asked Carver to do the bench press—a test the FIT study indicated women
13 police officers uniformly had problems passing, even after specific training—as the initial test,
14 even though it is listed second, after the agility run, in the FIT recommendations.

15 57. Carver could not accomplish the bench press, and Eisenga did not allow her to take
16 any other parts of the physical fitness test that day.

17 58. Eisenga told Carver she could come back to try to pass the physical fitness test the
18 next time CPD offered it.

19 59. Combs took all portions of the physical fitness exam and did not pass the last event,
20 i.e., the 1.5 mile run.

21 60. Eisenga invited Combs to come back in two weeks to re-test on the 1.5 mile run.

22 61. When Combs came back for re-testing, Eisenga allowed him to do the 1.5 mile run
23 without having to take and pass the previous physical tests beforehand. That day, Combs
24 satisfied the 1.5 mile run standard.
25
26

1 62. On or about May 6, 2008, Kuhlt filed a timely charge of employment
2 discrimination on the basis of sex, and the Civil Rights Division ("Division") commenced an
3 investigation of the charge.

4 63. At the conclusion of the investigation, the Division determined that there was
5 reasonable cause to believe that Defendants discriminated against Kuhlt because of her sex by
6 adopting a physical fitness test that Defendants knew had a disparate impact on female police
7 officers, which Defendants had not validated as job related or consistent with business
8 necessity, and to which less restrictive alternatives existed and had been adopted by state law
9 enforcement agencies, in order to prevent well-qualified female law enforcement officers like
10 Kuhlt and Carver from being promoted or hired. The Division also concluded that there was
11 reasonable cause to believe that Defendants discriminated against Kuhlt because of sex by
12 requiring her to pass the physical fitness test to promote to sergeant in 2007 when General
13 Order 206 provided that sworn personnel like Kuhlt who had been hired before January 1,
14 2007, did not need to pass the physical fitness test until January 1, 2010, and by applying the
15 physical fitness testing policy and performance standards more rigorously against Kuhlt and
16 Carver than against Combs.

17 64. The Civil Rights Division issued its Cause Finding on Kuhlt's May 6, 2008, charge
18 on April 28, 2009, after which the Division, Kuhlt and Defendants did not enter into a
19 Conciliation Agreement.

20 65. The State filed this lawsuit pursuant to A.R.S. § 14-1481(D) on May 5, 2009.

21 66. On or about April 20, 2009, before the Cause Finding was issued, Kuhlt appeared
22 for General Order 206 physical fitness testing. Because she had just finished spinal
23 decompression therapy for the back injury she sustained during the May 2008 physical fitness
24 testing, Kuhlt provided a medical release requesting that she be allowed an alternative test of
25 aerobic fitness to the 1.5 mile run, such as walking 2.0 miles. Kuhlt's release form indicated
26 that there were "no contraindications" to her being capable of performing the essential

1 functions of her job. Kuhlert was told she could take the physical fitness test the next time it
2 was offered.

3 67. According to General Order 206, the purpose of the 1.5 mile run is to measure
4 "aerobic power or cardiovascular endurance (the ability to sustain exertion over time)" and the
5 test "consists of running/walking as fast as safely possible the distance of 1.5 miles."

6 68. On April 30, 2009, after the Cause Finding was issued, Kuhlert received an e-mail
7 from Eisenga notifying her and others that a make-up physical fitness exam for those who
8 were not able to take the exam in April 2009 was scheduled for May 18, 2009, at 8:00 a.m and
9 5:00 p.m. The email indicated that all recipients would be required to appear and take the
10 physical fitness exam. Kuhlert responded that she still would not be able to do the 1.5 mile run
11 and asked if Eisenga would require another note from her physician.

12 69. On May 1, 2009, Kuhlert was informed by CPD human resources ("HR") that the
13 City was in the process of obtaining clarification from Kuhlert's physician about his comments
14 regarding Kuhlert's inability to complete the 1.5 mile run. HR told Kuhlert that CPD would
15 determine whether it needed another note from Kuhlert's physician after they spoke to him.

16 70. On May 4, 2009, Kuhlert's physician followed up with a Cottonwood worker's
17 compensation claims adjuster in response to the adjuster's letter inquiring about Kuhlert's work
18 restrictions. Kuhlert's physician clarified in writing that he had never recommended work
19 restrictions for Kuhlert. Rather, he indicated that Kuhlert had significant pain after a long run and
20 recommended that she be given an alternative aerobic physical fitness test to the 1.5 mile run.
21 Specifically, he recommend that Kuhlert "should be given the opportunity to walk or ride a
22 stationary bike, as they do in the military."

23 71. Despite Kuhlert's physician's clarification, on May 8, 2009, Detective Kuhlert received
24 written notice from HR that CPD would require her to be examined by an Arizona Peace
25 Officer Standards and Training ("AZPOST")-trained doctor before she could be eligible to
26 take the physical fitness exam. The available examination dates with the AZPOST-trained

1 doctor were May 14, 2009, and anytime on May 18, 2009, the same date as the physical fitness
2 exam.

3 72. Kuhlt informed HR that she was scheduled to be in Phoenix for a financial crimes
4 training on May 13 and 14, 2009. She also indicated that she was scheduled for firearms
5 training at 6:00 p.m. on May 18, 2009, and therefore could only appear for the physical fitness
6 exam at 8:00 a.m. on that day. Accordingly, Kuhlt could not meet with the AZPOST-trained
7 doctor and take the physical fitness on May 18, 2009.

8 73. On May 11, 2009, Kuhlt was informed by Eisenga and her direct supervisor that
9 she could not attend the financial crimes training so that she would be available for
10 examination by the CPD-chosen doctor ("CPD's doctor") on May 13. Eisenga did not explain
11 to Kuhlt the reason why the examination had to take place on May 13 when the doctor initially
12 was only available on May 14 or May 18.

13 74. On May 13, 2009, as required, Kuhlt was examined by CPD's doctor, who
14 informed Kuhlt that, because she could not run without her back becoming sore, she was
15 "disqualified to be a peace officer at this time." CPD's doctor directed Kuhlt to obtain
16 physical therapy and told her that she needed to "have her back cleared" to be a police officer.
17 He further stated in his report that he felt "with rehab she would be able to complete the test
18 without pain." CPD's doctor did not recommend any alternative aerobic fitness test that could
19 replace the 1.5 mile run.

20 75. Fanning placed Kuhlt on light duty immediately after her examination by CPD's
21 doctor, pending receipt of his written report. Kuhlt also was not allowed to take any
22 component of the physical fitness exam, even though her doctor had cleared her to take every
23 component of the exam except the 1.5 mile run, for which he recommended an alternative test.

24 76. CPD did not require Kuhlt to be examined by an AZPOST-trained doctor after she
25 was injured during physical fitness testing in May 2008 or at any time during her treatment for
26

1 that injury, and it did not place her on light duty during the period of time that she was
2 receiving worker's compensation benefits to pay for those treatments.

3 77. Defendants did not question Kuhl's medical release or her ability to perform her
4 job duties until after the Division issued the Cause Finding on Kuhl's May 6, 2008,
5 discrimination charge.

6 78. CPD never followed up with Kuhl about the physical therapy that CPD's doctor
7 recommended, and a different AZPOST-trained doctor found her fit for duty just five months
8 later with no additional treatment or any change in Kuhl's back condition.

9 79. During the roughly five-month period that Kuhl was on light duty, she engaged in
10 work activities that were consistent with full duty status with the full knowledge and approval
11 of her supervisors.

12 80. Whereas Kuhl was put on light duty after requesting permission to walk 2.0 miles
13 rather than walk/run 1.5 miles when taking the mandatory physical fitness test, Defendants
14 allowed one male sergeant to be completely excused from taking the physical fitness test for
15 medical reasons without being placed on light duty and allowed a second male officer to be
16 excused from the agility run, the 300 meter run and the 1.5 meter run due to his back condition
17 without assigning that officer to light duty, either.

18 81. As a result of being placed on light duty, Kuhl was prevented from participating in
19 off-duty police activities for which she could have received additional pay.

20 82. On June 9, 2009, Kuhl filed a charge alleging that Defendants retaliated against
21 her after the Division issued the Cause Finding on her May 6, 2008, discrimination charge.

22 83. On April 8, 2010, the Division issued a Second Cause Finding, which alleged that
23 there was reasonable cause to be believe that, because Kuhl opposed Defendants'
24 discriminatory application of the General Order 206 physical fitness test, Defendants retaliated
25 against her by, among other things, denying her an important training opportunity; requiring
26

1 her to submit to an unwarranted medical examination; and placing her on light duty for five
2 months when similarly situated male officers were not placed on light duty at all.

3 84. On June 2, 2010, Kuhl, the Division and Defendants attempted to conciliate
4 Kuhl's retaliation charge, as well as her disparate impact and disparate treatment claims, in a
5 mediation session with a private mediator. That attempt did not result in a settlement
6 agreement.

7 85. Under a May 6, 2010, tolling agreement, the State and Defendants stipulated to
8 extend the time period during which the State could file a civil action against Defendants
9 and/or move to amend this lawsuit based on Kuhl's retaliation charge until June 18, 2010.

10 86. The State moved to amend its Complaint in this matter to include a claim for
11 retaliation on June 17, 2010.

12 STATEMENT OF CLAIMS

13 COUNT I

14 **Unequal compensation, terms, conditions or privileges of employment based on sex** 15 **in violation of A.R.S. § 41-1463(B)(1)**

16 87. The State re-alleges and incorporates by reference the allegations contained in
17 paragraphs 1 through 86 of this Complaint.

18 88. Under A.R.S. § 41-1463(B)(1), it is an unlawful employment practice for an
19 employer to discriminate against any individual with respect to compensation, terms,
20 conditions, or privileges of employment because of sex.

21 89. Defendants unlawfully discriminated against Kuhl in violation of A.R.S. § 41-
22 1463(B)(1) by requiring her to take and pass a physical fitness test that Defendants knew had a
23 disparate impact on women and which Defendants had not validated as job related to the
24 position of sergeant or any other CPD law enforcement position or consistent with business
25 necessity; by requiring Kuhl to take and pass this test before she could be promoted to
26

1 sergeant in 2007 and 2008, even though the Order mandating the policy provided that officers
2 like Kuhlt who had been hired before January 1, 2007, did not have to pass the test until
3 January 1, 2010; by denying Kuhlt promotion to the rank of sergeant because she had not
4 passed the invalid and unnecessary physical fitness test; by promoting male officers who were
5 less qualified than Kuhlt in her stead; by relaxing the testing protocols and passing standards
6 for at least one male applicant to the CPD to allow him to enter the police academy while
7 holding Kuhlt and a previously certified female police officer to different, more rigorous
8 standards to prevent them from promoting or being hired by the CPD.

9 90. As a result of Defendants' discrimination, Kuhlt suffered monetary damages for
10 which she should be compensated in an amount to be determined at trial pursuant to A.R.S. §
11 41-1481(G).

12 91. To remedy the effects of Defendants' discrimination, Kuhlt also is entitled to
13 affirmative relief under A.R.S. § 41-1481(G), including but not limited to rightful place
14 reinstatement.

15 92. The State also is entitled to injunctive relief against Defendants' actions pursuant to
16 A.R.S. § 41-1481(G).

17 **COUNT II**

18 **Limiting, segregating or classifying employees or applicants for employment so as to** 19 **deprive them of employment opportunities based on sex in violation of** 20 **A.R.S. § 41-1463(B)(2)**

21 93. The State re-alleges and incorporates by reference the allegations contained in
22 paragraphs 1 through 92 of this Complaint.

23 94. Under A.R.S. § 41-1463(B)(2), it is an unlawful employment practice for an
24 employer to limit, segregate or classify employees or applicants for employment in any way
25 which would deprive or tend to deprive any individual of employment opportunities or
26 otherwise adversely affect the individual's status as an employee because of sex.

1 95. Defendants unlawfully discriminated against Kuhlert in violation of A.R.S. § 41-
2 1463(B)(2) by requiring her to take and pass a physical fitness test that Defendants knew had a
3 disparate impact on women and which Defendants had not validated as job related to the
4 position of sergeant or any other CPD law enforcement position or consistent with business
5 necessity; by requiring Kuhlert to take and pass this test before she could be promoted to
6 sergeant in 2007 and 2008, even though the Order mandating the policy provided that officers
7 like Kuhlert who had been hired before January 1, 2007, did not have to pass the test until
8 January 1, 2010; by denying Kuhlert promotion to the rank of sergeant because she had not
9 passed the invalid and unnecessary physical fitness test; by promoting male officers who were
10 less qualified than Kuhlert in her stead; by relaxing the testing protocols and passing standards
11 for at least one male applicant to the CPD to allow him to enter the police academy while
12 holding Kuhlert and a previously certified female police officer to different, more rigorous
13 standards to prevent them from promoting or being hired by the CPD.

14 96. As a result of Defendants' discrimination Kuhlert suffered monetary damages for
15 which she should be compensated in an amount to be determined at trial pursuant to A.R.S. §
16 41-1481(G).

17 97. To remedy the effects of Defendants' discrimination, Kuhlert also is entitled to
18 affirmative relief under A.R.S. § 41-1481(G), including but not limited to rightful place
19 reinstatement.

20 COUNT III

21 Discriminating against an employee because she opposed an discriminatory employment
22 practice, filed a charge or participated in a Division investigation in violation of
23 A.R.S. § 41-1464(A)

24
25 98. The State re-alleges and incorporates by reference the allegations contained in
26 paragraphs 1 through 97 of this Complaint.

99. Under A.R.S. § 41-1464(A), it is an unlawful employment practice for an employer to discriminate against any of its employees because the employee opposed any practice which is an unlawful employment practice or because the employee made a charge, testified, assisted or participated in any manner in a Division investigation.

100. Kuhl opposed Defendants allegedly discriminatory employment practices by filing her May 6, 2008, charge with the Division. Kuhl participated and gave testimony during the Division's investigation of that charge, which resulted in a Cause Finding against Defendants on April 28, 2009.

101. Because Kuhlth opposed Defendants' discriminatory conduct and participated in the Division's investigation of that conduct, Defendants retaliated against Kuhlth in violation of A.R.S. § 41-1464(A) by, among other things, denying her an important training opportunity; requiring her to submit to an unwarranted medical examination; and placing her on light duty for five months when similarly situated male officers were not placed on light duty at all, purportedly because she was medically "unfit" for duty, although Kuhlth's own physician represented there were "no contraindications" to her performing all her CPD duties.

102. As a result of Defendants' discrimination, Kuhlert suffered monetary damages for which she should be compensated in an amount to be determined at trial pursuant to A.R.S. § 41-1481(G).

103. To remedy the effects of Defendants' discrimination, Kuhl is entitled to affirmative and injunctive relief under A.R.S. § 41-1481(G).

104. The State also is entitled to injunctive relief against Defendants' actions pursuant to A.R.S. § 41-1481(G).

PRAYER FOR RELIEF

WHEREFORE, the State requests that this Court:

A. Enter judgment on behalf of the State, finding that Defendants unlawfully discriminated against Kuhl because of her sex, and retaliated against her for opposing

1 Defendants' discriminatory employment practices and/or for participating in the Division's
2 investigation of those discriminatory practices, in violation of the Arizona Civil Rights Act.

3 B. Enjoin Defendants, their successors, assigns and all persons in active concert or
4 participation with Defendants, from engaging in any employment practice, including applying
5 invalid and unnecessary physical fitness performance standards that are known to have a
6 disparate impact on women, which discriminates in violation of the Arizona Civil Rights Act.

7 C. Order Defendants to make Kuhlth whole and award Kuhlth back wages
8 representing the difference between the salary Kuhlth would have been paid had she been
9 promoted to sergeant, and the amount that she was paid by Defendants, calculated from
10 February 18, 2007, the first date a male officer was wrongfully promoted in her stead, together
11 with prejudgment interest, in amounts to be determined at trial.

12 D. Order rightful place reinstatement for Kuhlth, including but not limited to
13 promotion to the rank of sergeant retroactive to February 17, 2007, the day before the first
14 male officer was wrongfully promoted in her stead, and adjusting seniority, pension and other
15 benefits calculations accordingly.

16 E. Order Defendants, their successors, assigns and all persons in active concert or
17 participation with Defendants, to create and enforce policies, practices and programs that
18 provide equal employment opportunities for all their employees, and that eradicate the effects
19 of their present unlawful employment practices, including but not limited to policy changes
20 and training.

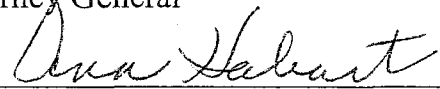
21 F. Issue an Order authorizing the State to monitor Defendants' compliance with the
22 Arizona Civil Rights Act and order Defendants, its successors, assigns and all persons in active
23 concert or participation with Defendants, to pay the State a reasonable amount for such
24 monitoring.

25 G. Award the State its taxable costs incurred in bringing this action.
26

1 H. Grant such other and further relief as this Court may deem just and proper in the
2 public interest.

3 Dated this 21st day of July, 2010.

4
5 TERRY GODDARD
Attorney General

6 By 

7 Ann Hobart
8 Assistant Attorneys General
9 Civil Rights Division
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2010, the Original of the foregoing Amended Complaint for Damages and Injunctive Relief was filed with the Clerk of the Superior Court, for Maricopa County.

and a

COPY of the foregoing mailed
this 21st day of July, 2010, to:

The Honorable Dean M. Fink
Maricopa County Superior Court
East Court Building-412
101 W. Jefferson
Phoenix, AZ 85003

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